

UNOFFICIAL SUBSTITUTE BILL

HOUSE BILL NO. 240

INTRODUCED BY K. FLYNN, R. ARTHUN, D. SKEES, A. WITTICH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EMINENT DOMAIN LAWS; CLARIFYING THE REJECTION PROCESS OF A CONDEMNOR'S FINAL WRITTEN OFFER; CLARIFYING THE FACTS NECESSARY FOR CONDEMNATION; CLARIFYING THE PROCESS FOR AN AWARD OF LITIGATION EXPENSES; ESTABLISHING OPTIONAL APPRAISAL, NEGOTIATION, AND OTHER CONDEMNATION POLICIES; PROVIDING CERTAIN TAX RATES FOR TRANSMISSION LINES FOR WHICH EMINENT DOMAIN MAY BE USED; AMENDING SECTIONS 70-30-101, 70-30-110, 70-30-111, 70-30-305, AND 70-30-311 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to second reading of bill)

Strike everything after the enacting clause and insert:

**Section 1. Section 70-30-101, is amended to read;**

**"70-30-101. Eminent domain defined -- definitions.** (1) Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

(2) As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(a) "Appraisal" means a written statement, independently and impartially prepared by a certified general real estate appraiser, with a minimum of 5 years of experience, as defined in 37-54-102, setting forth an opinion of defined value of an adequately described property or property interest as of a specific date and supported by the presentation and analysis of relevant market information. For appraisals done by appraisers licensed by another state, the licensure qualifications for that state must be as stringent as those provided for in Title 37, chapter 54, part

(b) "Coercive in nature" means a type of action that uses duress in an attempt to induce a person to sign an instrument or to agree to the terms of a document against that person's will.

(c) "Final written offer" means the last written offer presented to the landowner at least 30 days before service of process in a civil action pursuant to 70-30-202.

(d) "Negotiation" means a communication process of give-and-take discussions between parties.

(e) "State or its Agents" means a department, agency, or instrumentality of the state or a political subdivision of the state, a department, agency, or instrumentality of two or more states, or a person who has the authority to acquire property by eminent domain as provided in this chapter."

**Section 2. Section 70-30-110, MCA, is amended to read:**

**"70-30-110. Survey and location of property to be taken -- greatest public good -- least private injury.** (1) In all cases in which land is required for public use, the state or its agents in charge of the public use may survey and locate the land to be used. The use must be located in the manner that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish written notice to the listed persons. The notice to the listed persons shall be sent to the address provided by the owner, and if the owner fails to provide the address then there is no obligation to send the notice unless the condemnor otherwise has an address for the listed person. The notice to the listed persons shall not affect the deadline of the original 30 days' notice or the condemnor's right to enter upon the land upon the expiration of the 30 days.

(2) Prior to ~~or at the time of rejection~~ of the final written offer as referred to in 70-30-111(4), the condemnee may provide to the condemnor the condemnee's claim of appropriate measures

that the condemnee considers necessary to minimize damages to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel of property.

**Section 3. Section 70-30-111, MCA, is amended to read:**

**"70-30-111. Facts necessary to be found before condemnation.** Before property can be taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

- (1) the use to which the property is to be applied is a public use pursuant to 70-30-102;
- (2) the taking is necessary to the public use;
- (3) if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use;

(4) ~~an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected.~~ a final written offer of just compensation was made and the property owner was given 30 days to provide a written acceptance or rejection of the offer. The written offer shall be sent to the owner's property tax address, unless the owner has advised the condemnor in writing of a different address for notices for purposes of the negotiations, and delivered by certified mail. A written offer is considered rejected if no written acceptance is received within 30 days after its delivery;

- (5) the appraisal, negotiation and other condemnation policies required pursuant to [SECTION 5] have been satisfied, and

(6) That there have been no actions coercive in nature to compel an agreement on the price to be paid for the property."

**Section 4. Section 70-30-305, MCA, is amended to read:**

**"70-30-305. Condemnor to make offer upon appeal -- award of expenses of litigation.**

- (1) The condemnor shall, within 30 days after an appeal is perfected from the condemnation commissioner's award or report or not more than 60 days after the waiver of appointment of commissioners, submit to the condemnee a written ~~final~~ offer of judgment for the property

sought to be taken, together, if the award was in excess of the final written offer as provided in 70-30-111(4), with the accrued necessary expenses of the condemnee. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service of the acceptance, and judgment must be entered. An offer not accepted is considered withdrawn and evidence of the offer is not admissible at the trial ~~except in a proceeding to determine costs~~. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the condemnee prevails by receiving an award in excess of the final ~~offer of the condemnor~~ written offer as provided in 70-30-111(4), the court shall award necessary expenses of litigation to the condemnee."

**Section 5. Section 70-30-311, MCA, is amended to read:**

**"70-30-311. Putting condemnor in possession.** (1) At any time after the filing of the preliminary condemnation order pursuant to 70-30-206 or an order as provided in 60-4-104(4) and (5) and while it retains jurisdiction, the court upon application of the condemnor may make an order that:

(a) upon payment into court of the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation under 70-30-207, or the amount assessed either by the commissioners or by the jury, or the amount of the condemnor's final written offer under [section 6 subsection (11)], the condemnor is authorized:

(i) if already in possession of the property of the condemnee that is sought to be taken, to continue in possession; or

(ii) if not in possession, to take possession of the property and use and possess the property during the pendency and until the final conclusion of the proceedings and litigation; and

(b) all actions and proceedings against the condemnor on account of the possession are stayed until the final conclusion of the proceedings and litigation.

(2) If the condemnee fails to file a statement of claim of just compensation within the time specified in 70-30-207, the condemnor may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a condemnor's payment into court of 125% of the amount assessed either by the commissioners or by the jury must be made within 10 days of receipt of the report of the condemnation commissioners under 70-30-303 or the jury verdict under 70-30-304 ~~condemnee's statement of claim~~ .

(3) However, when an appeal is taken by the condemnee, the court, upon request of the condemnee, may require the condemnor ~~before continuing or taking possession~~, in addition to paying into court the amount assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the court may direct, conditioned to pay the condemnee any additional damages and costs above the amount assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for public use. The condemnor may remain in possession of the property during the proceedings to determine the bond or undertaking, and may continue in possession if it posts the bond or undertaking within 10 days of the court's order determining the bond or undertaking.

(4) The amount assessed by the commissioners or by the jury on appeal is considered, for the purposes of this section and until reassessed or changed in the further proceedings, as just compensation for the property taken. However, the condemnor, by payment into court of ~~the an~~ an amount under subsection (1)(a) claimed in the answer or the amount assessed or by giving security as provided in subsection (3), may not be prevented from appealing from the assessment but may appeal in the same manner and with the same effect as if money had not been deposited or security had not been given.

(5) (a) Subject to subsection (5)(b), in all cases in which the condemnor deposits ~~the an~~ an amount under subsection (1)(a) ~~of the assessment~~ and continues in possession or takes possession of the property, as provided in this section, the condemnee, if there is no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money deposited. The demand or receipt may not preclude the condemnee's right of appeal from the assessment. However, if the amount of the assessment is finally reduced on appeal by either party, the condemnee who has received all or any part of the amount deposited

is liable to the condemnor for any excess of the amount received over the amount finally assessed, with legal interest on the excess from the time the condemnee received the money deposited. The excess, plus interest, may be recovered by a civil action. Upon any appeal from an assessment by the commissioners to a jury, the jury may make a finding for any amount that it considers appropriate.

(b) The court may not order the delivery to any condemnee of more than 75% of the money deposited on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess of the condemnee's final award in the proceedings."

**NEW SECTION. Section 6. Written offer, negotiation, and other condemnation policies mandated.** Unless the landowner and state or its agents agree in writing otherwise, the state or its agents shall comply with the following policies for the acquisition of real property:

(1) Before the initiation of negotiations for the acquisition of real property, an amount must be established by the state or its agents that is reasonably believed to be just compensation, which may be based on an appraisal of the property or interest taken, and that amount must be offered for the property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for the improvement, other than an amount due to physical deterioration within the reasonable control of the owner, must be disregarded in determining the compensation for the property. The owner of the real property to be acquired must be provided with a written statement of and summary of the basis for the amount established as just compensation. When appropriate, the just compensation for the real property to be acquired and for damages to remaining real property must be separately stated. The written statement shall be sent to the owner's property tax address, unless the owner has advised the state or its agents in writing of a different address for notices for purposes of the negotiations, and delivered by certified mail.

(2) (a) The owner of the property sought to be taken shall reply to the state or its agents in writing within 30 days of delivery of the notice pursuant to subsection (1) in accordance with subsections (2)(b) through (2)(d).

(b) In a reply to the written notice, the owner of the property sought to be taken shall accept, reject, or provide a counteroffer to the state or its agents.

(c) The reply must be delivered by certified mail.

(d) If the owner of the property sought to be taken fails to reply within 20 days, it will be considered a rejection of the offer of the state or its agents.

(3) After receiving a response to its offer pursuant to subsection (2), the state or its agents may continue negotiations with the owner of the property sought to be taken by providing additional written offers. If it is provided with additional written offers, the property owner shall respond as provided in subsection (2).

(4) If forty-five (45) days have elapsed since the initial offer and the property owner fails to respond, the offer is rejected; or if, despite receiving a counteroffer, the state or its agents may send written notice to the property owner to end initial negotiations. The notice must be sent to the property owner's property tax address and delivered by certified mail.

(5) The state or its agents shall make every reasonable effort to expeditiously acquire real property by negotiation using the process in subsections (1) through (4) before a civil action for condemnation may be brought pursuant to 70-30-202:

(a) if within 45 days of the initial offer a voluntary property interest agreement has not been signed by both parties, then a formal mediation process may begin. The mediator must be paid for by the state or its agents. A reasonable effort to expeditiously acquire property need not require mediation.

(b) if within 90 days of the delivery of the initial offer the parties cannot agree on a mediation process or the mediation efforts do not produce a settlement agreement for a mutually signed property interest agreement, the person acquiring the property shall make the final written offer provided for in 70-30-111 (4) based upon an appraisal.

(c) the property owner has 30 days from delivery of the final written offer to either accept or reject the final written offer, and a lack of acceptance or rejection on the part of the property owner within that time means that the property owner has rejected the final written offer.

(d) if the final written offer is rejected as provided in subsection (c), a civil action may be filed pursuant to 70-30-202.

(6) A property owner's claim for appropriate measures may not be considered a rejection of the final written offer of the state or its agents referred to in 70-30-111(4).

(7) Real property must be appraised before the final written offer and the owner or the owner's designated representative must be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. The appraiser has the right to enter upon the property for purposes of the appraisal and the entry does not constitute a cause of action in favor of the owner except from injuries resulting from negligence or intentional acts.

(8) An owner may not be required to surrender possession of real property before the agreed purchase price and relocation costs are paid or before there is deposited with the court, in accordance with 70-30-311 or subsection (11) for the benefit of the owner, an amount not less than 125% of the amount of the condemnor's final written offer or the amount of the award of compensation in the condemnation proceeding of the property or the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation under 70-30-207.

(9) The construction or development of a program or project must be scheduled so that, to the greatest extent practicable, a person lawfully occupying real property is not required to move from a dwelling or to materially move the person's business or farm operation without at least 90 days' written notice of the date by which a move is required.

(10) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the condemnor on short notice, the amount of rent required may not exceed the fair rental value of the property to a short-term occupier.



(11) If a proceeding is initiated pursuant to 70-30-202, and unless another amount is deposited under 70-30-311(1)(a), 125% of the amount of the condemnor's final written offer must be deposited with the court for the use of the condemnee.

(12) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings must be instituted as provided in this chapter.

(13) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, the state or its agent shall compensate the owner for the uneconomic remnant created by the state or agent's actions pursuant to eminent domain.

(14) A person whose real property is being acquired may, after being fully informed of the person's right to receive just compensation, donate to the condemnor the property, any interest in the property, or any compensation received for the property.

NEW SECTION. SECTION 7. TAXATION OF PROPERTY ACQUIRED FOR ELECTRIC TRANSMISSION LINES. (1) IF A TRANSMISSION LINE THAT REQUIRES A CERTIFICATE OF COMPLIANCE UNDER THE MONTANA MAJOR FACILITY SITING ACT, TITLE 75, CHAPTER 20, IS SITED ON PRIVATELY HELD DEEDED REAL PROPERTY THAT IS ACQUIRED THROUGH A VOLUNTARY AGREEMENT WITH THE PROPERTY OWNER, THE CENTRALLY ASSESSED VALUE FOR THAT PORTION OF THE PRIVATELY HELD DEEDED REAL PROPERTY IS SUBJECT TO THE TAX RATE OF EITHER 1 PERCENTAGE POINT LESS THAN THE RATE FOR CLASS FOURTEEN PROPERTY, AS PROVIDED IN 15-6-157, FOR RENEWABLE ENERGY PROJECTS, OR 1 PERCENTAGE POINT LESS THAN THE TAX RATE FOR CLASS NINE PROPERTY, AS PROVIDED IN 15-6-141, FOR OTHER TRANSMISSION PROJECTS, AS DETERMINED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO 15-6-157(2)(A).

(2) IF A TRANSMISSION LINE THAT REQUIRES A CERTIFICATE OF COMPLIANCE UNDER THE MONTANA MAJOR FACILITY SITING ACT IS SITED ON PRIVATELY HELD DEEDED REAL PROPERTY THAT IS ACQUIRED BY A CIVIL ACTION PURSUANT TO 70-30-202, THAT PROPERTY IS SUBJECT TO A TAX RATE THAT IS 3 PERCENTAGE POINTS HIGHER THAN THE TAX RATE FOR CLASS NINE PROPERTY, AS PROVIDED IN 15-6-141.

(3) IF AN ENTITY REACHES VOLUNTARY PROPERTY AGREEMENTS WITH 97% OF THE LANDOWNERS OWNING PROPERTY ACQUIRED FOR THE TRANSMISSION LINE, THE ENTITY IS ENTITLED TO THE LOWEST PROPERTY TAX RATE FOR TRANSMISSION PROJECTS PROVIDED BY LAW.

(4) IF, AS A RESULT OF THE EMINENT DOMAIN PROCEEDINGS, THE COURT AWARDS AN AMOUNT EQUAL TO OR LESS THAN THE FINAL WRITTEN OFFER PRESENTED BY THE CONDEMNOR, THE CONDEMNOR IS ENTITLED TO THE LOWEST TAX RATE AVAILABLE FOR THAT SECTION OF THE LINE.

NEW SECTION. **Section 8. Codification instruction.** (1) [Section 6] is intended to be codified as an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to [section 6].

NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -